

# Advisory Opinion

IECDB AO 2008-07

May 5, 2008

Chris Scase  
Assistant Attorney General  
Hoover State Office Bldg., 2nd Floor  
Des Moines, Iowa 50319

Dear Assistant Attorney General Scase:

This opinion is in response to your letter of July 24, 2007, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(11) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

## FACTUAL STATEMENT:

You advise us that in IECDB Advisory Opinion 2003-15, the Board opined on the ability of the Iowa State Election Administrators Training (SEAT) program to provide compensation to government personnel who were instructors at SEAT trainings. In addition, in that opinion the Board determined that SEAT was not a "restricted donor" under the state code of ethics.

You further advise us that since the issuance of that opinion, the SEAT governing board has become a formalized body with 28E Agreements executed by the Iowa State Association of Counties, the State Association of County Auditors, and the Iowa Secretary of State's Office. A grant agreement is now in place whereby the Secretary of State is committing Help America Vote Act federal funds to support SEAT training programs. There are also individual contracts between counties and SEAT concerning membership. Finally, SEAT and Iowa State University Extension have an agreement for administrative and logistical support.

## QUESTIONS:

Due to the change of circumstances since the issuance of IECDB Advisory Opinion 2003-15, you ask us the following questions:

1. Are employees of a county auditor's office or the Secretary of State's Office permitted to accept speaker fees or gifts in exchange for preparing and delivering SEAT training?
2. Is SEAT now considered a "restricted donor" in relation to the Secretary of State's Office and counties that are members of SEAT?

#### OPINION:

We first note that our Executive Director/Legal Counsel was a member of the informal SEAT Board. However, he has not participated on the SEAT Board since the agreements that you provided us as part of the factual background of this opinion were negotiated or became effective. He does serve as a program instructor for SEAT on campaign finance and government ethics. We deem this activity to be part of his official state duties and he does not receive any reimbursement or speaking fees from SEAT. As these activities are part of his official duties, he is not engaged in an outside employment or activity that would create an impermissible conflict of interest under Iowa Code section 68B.2A in his researching this issue or preparing a draft opinion for the Board's consideration.

In answering your first question and in reconsidering IECDB Advisory Opinion 2003-15, the Board notes that the analysis concerning the application of Iowa Code section 68B.2A(1)"b" has not changed. If the SEAT program instructors are engaged in their official duties then they cannot personally accept a speaking fee under that section. If providing this type of activity is not part of their official duties, then they could accept payment subject to taking vacation time from their regular job or otherwise not "double dipping." <sup>2</sup>

Turning to your second question, Iowa Code section 68B.2(24) sets out a four part definition of "restricted donor" for purposes of the prohibitions in Iowa Code sections 68B.22 (gift law) and 68B.23 (honoraria). It appears that since SEAT "is or is seeking to be a party to any or any combination of sales, purchases, leases, or contracts to, from, or with the agency <sup>3</sup> in which the donee holds office or is employed" that it has become a "restricted donor." <sup>4</sup> As such, SEAT would be required to comply with Iowa Code sections 68B.22 and 68B.23.

Therefore, SEAT could not provide gifts or honoraria to employees of the Secretary of State's Office or the employees of SEAT member-counties unless one of the exceptions in those laws applied. We do note that both Iowa Code sections 68B.22 and 68B.23 provide an exception for payment of expenses for "registration, food, beverages, travel, and lodging" in return for "participation in a panel or speaking engagement at a meeting." If such reimbursement is provided, then the government official or employee could not also charge his or her agency for these expenses.

In closing, due to the change in factual circumstances the Board modifies those sections of IECDB Advisory Opinion 2003-15 concerning the determination that SEAT was not a "restricted donor" as set out herein. The remaining portions of that opinion remain unchanged.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair  
Janet Carl, Vice Chair  
Gerald Sullivan  
Betsy Roe  
John Walsh  
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

---

<sup>1</sup>Iowa Code section 68B.2A(1)“b” prohibits a government officials or employees from receiving compensation from anyone other than their state agencies or political subdivisions for the performance of any act that they would be required or expected to perform as part of their government duties.

<sup>2</sup>As the Board noted in IECDB Advisory Opinion 2003-15, the fact that the presenters are selected for their governmental expertise makes it difficult to believe that it would not be part of their official duties to give these types of speeches and presentations.

<sup>3</sup>Please note that “agency” is defined in Iowa Code section 68B.2 to encompass both the executive branch of state government as well as offices of a political subdivision.

<sup>4</sup> See Iowa Code section 68B.2(24)"a."